

Exhibit 2

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:	Case No.
RESIDENTIAL CAPITAL, LLC, et. al,	12-12020 (MG)
Debtors.	

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VIDEOTAPE DEPOSITION OF THOMAS MARANO

New York, New York

November 12, 2012

9:56 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27645

November 12, 2012

9:56 a.m.

Deposition of THOMAS MARANO,
held at the offices of Kramer, Levin,
Naftalis & Frankel, 1177 Avenue of the
Americas, New York, New York, pursuant
to Notice, before Erica L. Ruggieri,
Registered Professional Reporter and
Notary Public of the State of New
York.

1 THOMAS MARANO

2 have been responsible for the overall
3 leadership and management of the debtors
4 and their nondebtor subsidiaries; is that
5 true?

6 A. That is correct.

7 Q. And you've been familiar with
8 the debtor's day-to-day operations, their
9 financial condition, their business
10 affairs and their books and records; is
11 that correct?

12 A. Yes.

13 Q. In addition to being ResCap's
14 CEO, you are also a member of the
15 company's board of directors, correct?

16 A. Yes.

17 Q. And, in fact, you are the
18 chairman of the board, right?

19 A. Yes.

20 Q. Between May of 2009 and the
21 petition date, which I believe is May 13,
22 2012, you also served as chief capital
23 markets officer and chief mortgage officer
24 of Ally Financial, Inc., correct?

25 A. Yes.

1 THOMAS MARANO

2 Q. So for much of the time that you
3 had served as ResCap's CEO and chairman,
4 you have been an officer of AFI as well,
5 right?

6 A. Yes.

7 Q. Since becoming ResCap's CEO in
8 July of 2008, how have you been
9 compensated?

10 A. I have been compensated in a
11 combination of cash and deferred cash and
12 TARP stock.

13 Q. And under TARP, has there been a
14 cap on the amount of cash that you were
15 able to receive?

16 A. Yes.

17 Q. And when you say in noncash, is
18 that essentially stock or warrants of AFI?

19 A. I would characterize it more as
20 salary, stock of AFI and incentive award
21 stock.

22 Q. Okay. Is it fair to say that
23 under your compensation structure, the
24 total amount of your compensation is tied
25 to the financial success of AFI?

1 THOMAS MARANO

2 MR. PRINCI: Objection as to
3 form.

4 A. Could you repeat the question.

5 Q. Is it fair to say that under
6 your compensation structure, the total
7 amount of your compensation is tied to the
8 financial success of AFI?

9 A. My compensation is actually tied
10 to my performance in my role as chief
11 markets capital officer and chief mortgage
12 officer; and that compensation is set and
13 established and approved by the management
14 of Ally, and it is ultimately approved by
15 the paymaster in TARP.

16 Q. Are you saying that your
17 compensation bears no relationship to
18 AFI's financial performance?

19 A. Broadly, if AFI does well, I'll
20 do well. But AFI has a very large number
21 of components that affect their
22 profitability.

23 Q. Okay.

24 MR. KAUFMAN: This is the first
25 exhibit. This is the last exhibit, I

1 THOMAS MARANO

2 K&E would blame it on ResCap, meaning the
3 management of ResCap. MoFo would blame it
4 on the management of Ally.

5 And I think what he was
6 referring to here is that we had poor
7 communication between the law firms and
8 their clients, and we needed to get it
9 clear and settled, in order to determine
10 what we were all going to try and do.

11 Q. You recognized, didn't you, that
12 the interests of ResCap and AFI might be
13 potentially adverse?

14 A. At times they were.

15 Q. And so you knew that there
16 wasn't necessarily going to be a common
17 understanding between AFI and ResCap and
18 their respective counsel, right?

19 A. Yeah.

20 Q. In your response to
21 Mr. Carpenter, you said, "An observation.
22 ResCap repeatedly said DIP first and
23 stalking horse second, then 9019 third.
24 Ally tried repeatedly to make 9019 first."

25 Did I read that correctly?

1 THOMAS MARANO

2 A. Correct.

3 Q. And by DIP, you were referring
4 to ResCap's lining up DIP financing for a
5 bankruptcy, right?

6 A. Correct.

7 Q. And by your reference to
8 stalking horse, you were talking about
9 lining up a stalking horse bidder for
10 ResCap's assets in a bankruptcy auction?

11 A. Correct.

12 Q. And the reference to 9019 was to
13 a settlement of claims in a bankruptcy
14 between ResCap and AFI, right?

15 A. Correct.

16 Q. And did you understand at the
17 time that any such settlement would
18 involve releases to AFI from both ResCap
19 itself and third-party claimants?

20 A. Yes.

21 Q. When you told Mr. Carpenter in
22 what order ResCap prioritized those three
23 matters, you were talking about your own
24 views?

25 A. I was referring to the fact that

1 THOMAS MARANO

2 the ResCap management team and board had
3 decided that if we needed to be prepared
4 for bankruptcy, we needed to have a DIP
5 first, because that would provide us with
6 the working capital we would need to
7 preserve value for the estate; that we
8 would also need a stalking horse bid so
9 that we could have some certainty as to
10 somebody potentially being able to buy us.

11 And I was not going to go down
12 the road of -- by the way, I wasn't
13 involved in it, but none of us were going
14 to go down the road, actively, of a 9019
15 settlement. So that from our perspective,
16 ResCap's board and management had
17 concluded, get the liquidity you need to
18 live first, get a second -- get a stalking
19 horse bid second.

20 And we had outsourced or kind of
21 created a separate committee to deal with
22 the 9019 so that those of us running the
23 business could obtain the liquidity and
24 the stalking horse bid. Which we did, and
25 that strategy worked.

1 THOMAS MARANO

2 Q. And according to your e-mail to
3 Mr. Mackey, that was something that ResCap
4 repeatedly said, right?

5 A. Yes.

6 Q. And you reminded Mr. Mackey that
7 Ally was the one that had repeatedly tried
8 to make the 9019 settlement its number one
9 priority, correct?

10 A. Yes.

11 Q. What was your understanding as
12 to why AFI prioritized the settlement with
13 ResCap over DIP financing and an asset
14 sale for ResCap?

15 A. I don't know why they made it
16 their first priority. But it wasn't
17 relevant to me, because my responsibility
18 was to make sure we could provide a soft
19 landing for this company and preserve
20 asset value for the estate. I don't
21 really know why they tried to make it
22 their first priority.

23 Q. I wasn't asking you to read
24 their minds. But it was your
25 understanding, wasn't it, that AFI was

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THOMAS MARANO

interested in benefiting AFI and not
necessarily ResCap. That's why it was
pressing for the 9019 settlement between
ResCap and Ally, right?

MR. PRINCI: Objection as to
form.

Q. Isn't that what you knew?

A. No.

MR. PRINCI: Objection as to
form.

Q. Isn't that what you thought?

A. I --

MR. PRINCI: Objection as to
form.

A. I knew that they kept raising
this as an issue, and we kept saying, we
are not focused on it. We are focused on
the DIP and the stalking horse bid.

MR. PRINCI: Just give me a
chance to register an objection.

THE WITNESS: Sure.

MR. PRINCI: Thank you.

MR. KAUFMAN: Let's mark as the
next exhibit an e-mail dated April 12,

1 THOMAS MARANO

2 AFI, settling ResCap's claims against AFI,
3 right?

4 A. Yes.

5 Q. What was the board told about
6 that agreement at the May 9th meeting?

7 A. Mr. Nashelsky gave the --

8 MR. PRINCI: You can answer.

9 THE WITNESS: I can say that?

10 MR. PRINCI: Yeah.

11 A. Mr. Nashelsky, basically gave a
12 summary of what Ally was willing to do as
13 part of a settlement agreement, whether it
14 was compensation or provide various forms
15 of support, to enable a soft landing in
16 bankruptcy.

17 Q. What were the terms that were
18 reported to the board by Mr. Nashelsky or
19 yourself?

20 A. There was discussion about
21 origination, being able to continue to
22 originate while in bankruptcy, which was
23 critical to enhancing the value of the
24 platform. It put the platform in a
25 position where it would not be sold

1 THOMAS MARANO

2 basically just on asset value, but it
3 would be sold on enterprise value, which
4 is clearly what we saw with the \$3 billion
5 bid.

6 We also talked about dollar
7 amount of settlement. And I believe there
8 may have been a small DIP that was going
9 to be provided as well for, to allow us to
10 continue to do Ginnie Mae originations.

11 And that DIP, sorry, for
12 clarification, that DIP was provided by
13 Ally, not related to the Barclays DIP.

14 Q. What was the board told about
15 the AFI/ResCap settlement agreement?

16 A. I believe Mr. Nashelsky shared
17 the terms of that settlement agreement
18 with the board, you know, the basic
19 details of it.

20 Q. Was that the first time you had
21 heard the final details?

22 A. It was not the first time that I
23 had heard of the settlement agreement.
24 I'm not sure if this was the final
25 agreement.

1 THOMAS MARANO

2 I don't -- I'm not sure if we
3 had reached final agreement with Ally at
4 the time Mr. Nashelsky reported this. I
5 can't tell from looking at this, if we
6 had.

7 Q. Were those negotiations likewise
8 fluid, from your recollection?

9 A. They were -- they were very
10 fluid. And because I wasn't directly
11 involved in those settlement negotiations,
12 there were sometimes -- actually almost
13 all the time there were conversations
14 going on that I was not privy to until,
15 you know, we got to a final agreement.

16 Q. Is it your recollection that as
17 of the time the May 9th agreement
18 occurred, and the board approved the RMBS
19 settlement, the final terms of the
20 agreement between AFI and ResCap had not
21 yet been fixed?

22 A. Again, I'm telling you, I don't
23 recall they were.

24 Q. You don't recall one way or
25 another?

1 THOMAS MARANO

2 A. At this point in time I believe
3 my obligations to Ally were not there.

4 Q. And what's your basis for
5 understanding that you, as an officer and
6 director of ResCap LLC, owed fiduciary
7 duties to creditors' entities other than
8 ResCap LLC?

9 A. My understanding was that I was
10 responsible for the ResCap legal entity
11 and all of its subsidiaries. And so that
12 would have included RFC and GMAC. And
13 again, I felt at this point in time I
14 really had no obligation to Ally
15 whatsoever.

16 Q. And if there were a conflict
17 between what would benefit creditors of
18 ResCap LLC versus what would benefit
19 creditors of RFC, what was your
20 understanding as to how you were to
21 resolve that conflict?

22 A. Well, I feel like the deals we
23 struck were for everybody. And all of us,
24 not only ResCap, but all of its
25 subsidiaries got the same deal. So I was

1 THOMAS MARANO

2 focused on getting the same deal for
3 everybody.

4 Q. Okay. Can you answer my
5 question. And maybe you just did. But
6 just to make clear, what was your
7 understanding of what you were supposed to
8 do in the event of a conflict between what
9 would benefit creditors of ResCap LLC
10 versus what would benefit creditors, for
11 example, of RFC?

12 A. I -- I never thought about it in
13 the context of a conflict.

14 Q. Did you understand at the time
15 of the May 9th board meeting that there
16 were certain structures that might benefit
17 one group of creditors over another group
18 of creditors?

19 MR. PRINCI: Objection.

20 References facts not in evidence but
21 you can answer if you understand the
22 question.

23 A. I'm not sure I do follow.

24 Q. Okay. At the time of the
25 May 9th board meeting did you understand

1 THOMAS MARANO

2 that ResCap LLC was committing itself to
3 pay anything in connection with the
4 proposed settlement?

5 MR. PRINCI: Objection as to
6 form.

7 A. What -- with respect to the
8 settlement what I recall is trying to get
9 a global -- essentially buy global peace
10 for all the entities. How any allocation
11 of monies would be, you know, chopped up,
12 I was not thinking about that.

13 Q. At the time of the May 9th board
14 meeting did you understand that there was
15 even an assertion that ResCap LLC was a
16 potential, owed a potential claim to any
17 of the settling funds?

18 A. I'm not sure I thought about it
19 in that context.

20 Q. And so when the number was
21 reached, 8.7 billion, was it your
22 understanding that that 8.7 billion could
23 be asserted against every entity within
24 the ResCap enterprise?

25 A. I believe that could have. I

1 THOMAS MARANO

2 wasn't really focused on it, you know,
3 other than to get everybody the same deal.

4 Q. So getting back to this conflict
5 point. Do you understand that as between
6 ResCap LLC and Residential Funding
7 Company, LLC, there might be a
8 disagreement between those two entities as
9 to who was the proper party to pay the
10 claim?

11 A. Today or back then?

12 Q. Back then.

13 A. Again, I don't recall thinking
14 about it at the time.

15 Q. Okay. Who made the decision to
16 enter into the settlement on behalf of
17 Residential Funding Company, LLC?

18 A. That would have been the
19 directors of that entity.

20 Q. And how was that effectuated?

21 A. You'd have to talk to those
22 directors.

23 Q. And who were those directors?

24 A. I believe you've got Steve Abreu
25 and -- and Jim Whitlinger,

1 THOMAS MARANO

2 W-h-i-t-l-i-n-g-e-r.

3 Q. And who acted on behalf of GMAC
4 Mortgage, LLC?

5 A. I believe that was Steve Abreu
6 and Joe Pensabene, P-e-n-s-a-b-e-n-e.

7 Q. And did you understand in
8 connection with the May 9th board meeting
9 that you were acting at all on behalf of
10 Residential Funding Company, LLC in a
11 legal capacity?

12 MR. PRINCI: Objection. Calls
13 for an expert opinion.

14 If you understand the question,
15 you can answer it.

16 A. I'm not really sure what you
17 mean by a legal capacity. I mean from a
18 fiduciary point of view I was trying to
19 settle for everybody, get the biggest deal
20 for the family. How the mechanics of that
21 worked out I was not, you know, worried
22 about that detail.

23 Q. I don't know if it has been
24 marked. I apologize. Let's mark this as
25 9019-62.

1 THOMAS MARANO

2 respect to requests for documents you
3 believe are appropriate.

4 MR. SHORE: Thank you.

5 Q. Were you present at any
6 post-petition board meeting to discuss an
7 amendment to the settlement agreement or
8 any amendments to the settlement
9 agreement?

10 A. Yeah, I was at one. There was
11 one time where the agreement came in --
12 there was one board meeting where we
13 talked about an amendment to the
14 agreement.

15 Q. Okay. And then independent of
16 that one board meeting, that aside, has
17 there been any other post petition board
18 meeting at any ResCap entities as far as
19 you know to discuss the settlement
20 agreement?

21 A. Not that I'm aware of.

22 Q. So what do you recall about the
23 meeting with respect to the amendment?

24 A. There -- there were actually a
25 couple of attempts to amend the agreement